

each request for reference be accompanied by a fee of \$200 (now \$240) meant that a person wishing to dispute several assessments might be obliged to pay fees amounting to several hundreds of dollars. In Decision No. 3824 Mr Roach said:

I mention these matters because I am concerned that already the fixing of such fees as prerequisites to securing an independent review of the Commissioner's decisions is working to deny such an independent review to many and, thereby, justice to some.

In Decision No. 3825 Mr Roach said:

The present standards as to payment of fees go way beyond what is appropriate to ensure that individuals do not put the community to undue expense by making frivolous or vexatious claims I hope that the Parliament will act to ensure that a more appropriate and just system is introduced.

Expenditure incurred in macadamia nut venture

Decision No. 3845 (19 October 1987) concerned the review of a decision which disallowed the taxpayer's claim to deduct under section 51(1) of the Income Tax Assessment Act several items of expenditure incurred in relation to a macadamia-growing venture. The central issue was whether the taxpayer was, in the year in question, carrying on a business of primary production. The expenditure concerned related to the acquisition by the taxpayer of macadamia trees and their propagation and grafting. The trees were not, however, planted. The AAT held that, although the taxpayer may have made some wrong decisions concerning the venture, the expenditure had been incurred for no other purpose than of carrying on a business of primary production for the purpose of gaining or producing assessable income. Accordingly, the taxpayer was entitled to a deduction for the expenditure incurred.

Freedom of Information

Senate committee report on the operation of the FOI Act

In December 1987 the Senate Standing Committee on Legal and Constitutional Affairs tabled its long awaited report on the operation of the FOI Act. The 126 recommendations are too extensive to summarise here. Some of the recommendations concerning administrative review matters are:

- that, where a business which has been consulted under reverse-FOI concerning a request to an agency for access to a document seeks review by the AAT of the agency's decision to grant access, the business should not be restricted to reliance upon the section 43 grounds of exemption (see [1987] Admin Review 10-11);

- . that the AAT be empowered to award costs in favour of a reverse-FOI party appearing before the AAT to oppose the grant of access;
- . that such costs be payable by the Commonwealth but not by the applicant for access;
- . that such costs be awarded only where the party seeking them was successful or substantially successful in opposing access and, in the opinion of the AAT, its intervention was reasonable and necessary;
- . that, where the reverse-FOI appellant fails to succeed in the contentions it advances, the AAT be empowered to award costs against it and in favour of both the applicant for access and the Commonwealth;
- . that section 58B of the FOI Act relating to the constitution of the AAT for the purpose of reviewing conclusive certificates ought to be repealed (this recommendation is consistent with a recommendation made by the Council in Report No. 29, Constitution of the Administrative Appeals Tribunal);
- . that FOI publicity and training material emphasise the role of the Ombudsman as a means of resolving disputes relating to FOI;
- . that section 52F of the FOI Act relating to the Ombudsman as advocate before the AAT ought to be repealed;
- . that provision for complaint to the Ombudsman be integrated into Part VI of the FOI Act relating to review of decisions;
- . that, in the FOI area, the AAT be able to award costs against the Commonwealth and, subject to certain specified conditions, also against applicants (the objective of the recommendation being to deter applicants who might otherwise frivolously or vexatiously put agencies to considerable expense in preparing their cases and appearing in the AAT);
- . the present fee of \$240 payable on lodging an application for review by the AAT of a reviewable decision under the FOI Act (except where the decision relates to an income maintenance matter) should be reduced to \$120.

Senator Stone dissented from some of the recommendations in the report.

The report is a thorough piece of work written in an uncomplicated style. It deserves to be widely read and debated.

Conclusive certificates in relation to certain documents on applicant's departmental file

In Throssell and Department of Foreign Affairs (11 December 1987) the AAT determined that reasonable grounds existed for the claim that certain documents contained in the applicant's

departmental file were exempt documents pursuant to section 33(1)(a) or 36(1)(a) of the FOI Act. As to the claim concerning section 33(1)(a), Justice Neaves concluded that it might reasonably be apprehended that disclosure of the documents concerned would reveal, or assist in revealing, the source from which certain information concerning the applicant was communicated, on an understanding of strict confidentiality, to ASIO. In consequence he was satisfied that there existed reasonable grounds for the claim that each of the documents in question was an exempt document by reason of the circumstance that its disclosure under the Act would be contrary to the public interest for the reason that the disclosure would, or could reasonably be expected to, cause damage to the security of the Commonwealth.

The Courts

Discounting lump sum compensation payments

The issue before the High Court in Commonwealth of Australia v Blackwell (1987) 73 ALR 571 was whether, in the computation of a lump sum payable under section 49 of the Compensation (Commonwealth Government Employees) Act 1971, by way of a redemption of a liability to make periodical compensation payments, a discount rate should be applied and, if so, what the rate should be. This issue arose on an appeal from a decision of the full court of the Federal Court which had allowed an appeal from a decision of the AAT. (The decision of the full court of the Federal Court is mentioned at [1986] Admin Review 167.)

The High Court upheld the appeal from the decision of the Federal Court (Justice Deane dissenting). It considered that the general approach of the AAT was correct in applying a fixed rate of discount in the quantification of a redemption sum where a long period was involved. This general approach properly accorded with the view taken by the High Court in Todorovic v Waller (1981) 150 CLR 402 in relation to personal injury cases. However, in the present case, the High Court held that the AAT had misdirected itself in arriving at a discount rate of 4.5% per annum. It considered that there would be no objection to a discount rate of 3% per annum being applied. Accordingly, the High Court remitted the matter to the AAT to enable it to reconsider that part of its decision relating to the discount rate.

Departure by decision maker from policy rules

In Gerah Imports Pty Ltd v Minister for Industry, Technology and Commerce (11 December 1987) the applicant sought review of a decision of the Registrar of Quota Tender extending time for the lodgment of securities under the 1988 Global Tender Quota Scheme. The scheme was formulated by the Minister under section 266 of the Customs Act. The applicant was one of several tenderers who lodged securities by the required date. Several other tenderers lodged securities during an extension period